

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

OP.No. 3898 of 1999(L)

PETITIONER:

**TELLICHERRY PRIVATE BUS OPERATORS' MUTUAL
BENEFIT WELFARE SCHEME, TELLICHERRY,
REPRESENTED BY ITS
PRESIDENT: SRI.A.N.RAGHAVAN NAIR**

**BY ADV. SRI.T.M.SREEDHARAN
SRI.N.UNNIKRISHNAN**

RESPONDENTS:

- 1. THE SALES TAX INSPECTOR,
1ST CIRCLE,
TELLICHERRY.**
- 2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
KANNUR.**
- 3. THE MEMBER, BOARD OF REVENUE (TAXES),
(NOW COMMISSIONER OF COMMERCIAL TAXES),
VIKAS BHAVAN,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON
20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP NO. 3898/1999

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE DATED 25.1.1993.

EXT.P2: TRUE COPY OF THE REPLY DATED 2.4.1993.

EXT.P3: TRUE COPY OF THE ORDER DATED 4.4.1993.

EXT.P4: TRUE COPY OF ORDER DATED 5.5.1994 IN STRP NO.30/94.

**EXT.P5: TRUE COPY OF THE ORDER DATED 6.5.1998 IN STRP NO.555/94
PASSED BY THE THIRD RESPONDENT.**

ORDER IN C.M.P.NO.6627 OF 1999 IN OP NO.3898 OF 1999

DISMISSED

20/02/2007

**SD/-
ANTONY DOMINIC, JUDGE**

//TRUE COPY//

P.A. TO JUDGE

ANTONY DOMINIC, J.

O.P. NO. 3898 OF 1999

Dated this the 20th day of February, 2007

J U D G M E N T

The petitioner seeks an order quashing Exhibits P3 to P5 and a direction to the first respondent to forebear from recovering penalty of Rs.17,288/- in any manner. The facts which lead to the issuance of the impugned orders are that, the petitioner, described to be a mutual benefit society and operating a Mutual Benefit Welfare Scheme exclusively for the private bus operators of Tellichery, who are also the members of the scheme, deals in motor spare parts and lubricating oils. For the assessment year 1991-92, it was seen from the returns filed by it that the turn over was in excess of Rs.50 lakhs, rendering the petitioner liable for Turnover Tax at ½% of the turn over relating to lubricating oil and spare parts. In addition to this, the petitioner also had the liability to pay tax at the rate of 4% on the sales turn over of barrels.

2. Although the returns were filed by the petitioner in time, petitioner did not remit any amount towards tax for the aforesaid assessment year. As a result of this, Exhibit P1 notice was issued to the petitioner calling upon it to file its objections to the first respondent against the proposal to impose a penalty of Rs.69,200/-, being double the amount of tax due. In response, Exhibit P2 is the representation filed by the petitioner and thereafter considering the objections filed by Exhibit P3 order, the first respondent imposed a penalty of Rs.69,100/- on the petitioner. In Exhibit P3, it has been found that inspite of specific demand made at the time of verification of accounts on 25/1/93, the petitioner did not care to remit the tax and thus had consciously continued to unauthorisedly retain tax due to the Government. It is also stated that the dealer had failed to supply any explanation for non payment of tax inspite of service of notice. It was on this basis that the petitioner has been found to have consciously violated the provisions of

the Act deserving maximum penalty.

3. The petitioner pursued the matter in revision before the 2nd respondent. But by Ext.P4 order it was found that in view of the non remittance of tax, the order imposing penalty is in accordance with law. However, the 2nd respondent reduced the penalty to equal amount of tax due that is Rs.34,576/- to be just and reasonable. Still unsatisfied with the reduction at the hands of the 2nd respondent, the petitioner again filed revision before the 3rd respondent. By Exhibit P5, the 3rd respondent held that the petitioner is guilty of the lapses as already found by the lower authorities and deserve to be penalised. However, considering the fact that the petitioner is an association of bus operators and taking into account remittance of the entire tax demanded by the assessing authority, the 3rd respondent reduced the penalty amount to Rs.17,288/- being 50% of the tax due. It is challenging this order that the present O.P is filed.

4. Counsel for the petitioner submits that even as on date, the tax liability of the petitioner has not been finalised in as much as the Sales Tax Appellate Tribunal, Additional Bench, Kozhikode has passed order dated 24th February 1999 setting aside the assessment order in question and remanded the matter to the assessing authority for fresh assessment. According to him, the assessing authority is still seized of the matter and the matter has not reached finality. According to the counsel, at this stage it is premature to impose penalty on the petitioner. It is also submitted that the petitioner had no guilty intention or nor was there any mens rea warranting imposition of penalty, which, according to the counsel, is evident from the facts detailed in the original petition.

5. Having considered the contentions of the learned counsel for the petitioner and the submissions made by the learned Government pleader, I am not satisfied that the petitioner has made out a case for interference. It is an

admitted fact that along with the return or even subsequently on receipt of notice from the department, the petitioner did not remit tax, which he was obliged to do under the provisions of the Act. Thus in this case, there is an admitted lapse on the part of the petitioner and such a lapse, in terms of the provisions of the Act, attracts penal consequences as embodied in Section 45A. Therefore the proceedings initiated against the petitioner under Section 45A cannot be found fault with. I am also not persuaded to accept the petitioner's plea that there was no guilty intention when they failed to remit the tax due. As already noticed, not only was there violation of statutory obligation to remit at the time when return was filed, but also even subsequent notices issued by the department did not evoke any response from the petitioner. The necessary inference is that the attempt was only to avoid payment of tax.

6. What remains to be considered is the question whether the amount of penalty that was imposed is just and

reasonable. As per Section 45 A, double the tax is the maximum leviable penalty, in cases where tax liability is quantifiable as in this case. As already noted, while the 1st respondent imposed double the amount of tax as penalty, the 2nd respondent, in revision, reduced the same to equal amount of tax. Still later, the 3rd respondent, in revision, again reduced the same to 50% of the amount of tax. Thus the quantum of penalty as finally levied on the petitioner is only 50% of the tax due. In the circumstances of the case, I do not think it is too disproportionate warranting interference by this court.

In the result, writ petitioner is not entitled to the reliefs sought for and writ petition is dismissed. No costs.

ANTONY DOMINIC, JUDGE

Rp